



# **COMMONWEALTH of VIRGINIA**

Matthew J. Strickler  
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY  
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David K. Paylor  
Director

Robert J. Weld  
Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO DYNAX AMERICA CORPORATION Registration No. 21279**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Dynax America Corporation, regarding the Dynax America Corporation plant in Botetourt County, Virginia, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit(s) and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Dynax" means Dynax America Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Dynax is a "person" within the meaning of Va. Code § 10.1-1300.
6. "Facility" means the Dynax facility located at 568 East Park Drive in Botetourt County Virginia, which is owned and operated by Dynax.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "Permit" means a New Source Review (NSR) permit to operate a stationary source of air pollution, which was issued on May 15, 2017 under the Virginia Air Pollution Control Law and the Regulations to Dynax for operation of the Facility. The Permit supersedes a NSR permit that was issued to Dynax on January 3, 2017.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Dynax owns and operates the Facility. The Facility manufactures automotive parts.
2. The Permit authorizes Dynax to operate a stationary source of air pollution. The Permit contains conditions and enumerates limitations on the air emissions from the Facility and includes monitoring and recordkeeping requirements.
3. Condition 31 of the Permit states that HCl emissions from STE 4 shall not exceed 0.08 lb/hr. This condition is a State-Only Enforceable requirement because the Dynax permit application listed uncontrolled HCl emissions of 4.14 lb/hr, which exceeds the exemption level of 0.2475 lb/hr. Accordingly, the state toxics rule (9 VAC 5-60 Article 5) applies to emissions from STE 4.
4. Dynax performed stack testing to demonstrate compliance with HCl control efficiency for the #4 Etching Scrubber controlling HCl emissions from STE 4. DEQ received the

stack test results on December 8, 2017. The results documented a HCl emissions rate of 0.45 lb/hr, which represents a control efficiency of 94.7%. On January 18, 2018, DEQ staff performed a Partial Compliance Evaluation (PCE) to evaluate the December 8, 2017 stack test results. PCE results indicated that the stack test results documented violations of the emissions limit for HCl.

5. Condition 31 of the Permit requires that HCl emissions from STE 4 shall not exceed 0.08 lb/hr.
6. Va. Code §10.1-1322 states that "Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the Board under the provisions of this chapter."
7. On January 30, 2018, based on the January 18, 2018 PCE, the Department issued NOV No. ABRRO000778 to Dynax for the HCl emissions violation described in Paragraphs C(4) through C(7) above. This NOV number was subsequently changed to ABRRO000778-001.
8. On July 24, 2018, Dynax performed stack testing to demonstrate compliance with HCl control efficiency for the #4 Etching Scrubber controlling HCl emissions from STE 4. The stack test results were received on September 6, 2018. The results documented a HCl emissions rate of 0.53 lb/hr, which represents a control efficiency of 95.42%. On September 11, 2018, DEQ staff performed a PCE to evaluate the July 24, 2018 stack test results. PCE results indicated that the July 24, 2018 stack test results documented violations of the emissions limit for HCl.
9. On September 18, 2018, based on the September 11, 2018 PCE, the Department issued NOV No. ABRRO001012 to Dynax for the HCl emissions violation described in Paragraphs C(9) and C(10) above. This NOV number was subsequently changed to ABBRO000778-002.
10. On November 8, 2018, Dynax and DEQ staff met to discuss the NOV's.
11. Based on the results of the January 30, 2018 PCE, the Board concludes that Dynax has violated Va. Code §10.1-1322 and Condition 31 of the Permit as described in paragraphs C(4) through C(10) above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Dynax, and Dynax agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$168,204.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Dynax shall include its Federal Employer Identification Number (FEIN) \_\_\_\_\_ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Dynax shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Dynax for good cause shown by Dynax, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Dynax admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Dynax consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dynax declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Dynax to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dynax shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Dynax shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dynax shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dynax. Nevertheless, Dynax agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Dynax has completed all of the requirements of the Order;
- b. Dynax petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Dynax.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dynax from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Dynax certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Dynax to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Dynax.
13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
14. By its signature below, Dynax voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19<sup>th</sup> day of June, 2019.



Robert J. Weld, Regional Director  
Department of Environmental Quality

Dynax America Corporation voluntarily agrees to the issuance of this Order.

Date: 06.14.2019 By: [Signature]  
Dynax America Corporation

Commonwealth of Virginia  
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 14<sup>th</sup> day of June, 2019, by John Hattersley, who is Executive Vice President, on behalf of the corporation.

[Signature]  
Notary Public

225905  
Registration No.

My commission expires: August 31, 2020

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

Dynax shall:

1. Not later than 30 days after the effective date of this order, submit a Plan and Schedule (P&S) for returning to compliance with the HCl emissions limit at STE 4 specified in the Permit. The P&S shall include stack testing to verify return to compliance. Tests shall be conducted and reported and data reduced as set forth in 9VAC5-50-30, and the test methods and procedures contained in each applicable section or subpart listed in 9VAC5-50-410. The details of the tests are to be arranged with the Blue Ridge Regional Office. Dynax shall submit a test protocol at least 30 days prior to testing. One copy of the test results shall be submitted to the Blue Ridge Regional Office within 45 days after test completion and shall conform to the test report format enclosed with the Permit.
2. Dynax shall respond to any deficiencies in the P&S noted by DEQ within 10 days of receipt.
3. Within 10 days of approval by DEQ, Dynax shall implement the P&S according to its terms and schedule and no later than October 31, 2019. Dynax shall not alter, amend, or change the plan in any manner without prior DEQ approval.
4. Submit all requirements of Appendix A of this Order to:

Robert Steele  
Enforcement Specialist Sr.  
VA DEQ – Blue Ridge Regional Office  
3019 Peters Creek Road  
Roanoke, VA 24019  
(540) 562-6777  
[Robert.Steele@deq.virginia.gov](mailto:Robert.Steele@deq.virginia.gov)